

DRAFT DIRECTIVE TRANSMITTAL
WORKFORCE INVESTMENT ACT

Number: WIADD-66

Date: January 20, 2004

TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: GRIEVANCE AND COMPLAINT PROCEDURES

☒ **IMMEDIATE ACTION**

Bring this draft to the attention of the appropriate staff.

☒ **E-MAIL COPY TRANSMITTED**

Number of pages (including coversheet): 12

If there are any problems with this transmittal, please call Celia Guzman at 916/654-9767.

SUBJECT MATTER HIGHLIGHTS:

Please review and comment on the attached draft directive.

COMMENTS ARE DUE BY:

2/3/04

Comments can be submitted through one of the following ways:

- 1) **Web site** — www.edd.ca.gov/wiarep/wiainp.htm
- 2) **Fax** — WID, Attention: **Sandy Iwatsuru** at 916/654-9586
- 3) **E-Mail** — siwatsur@edd.ca.gov (Include “draft comments” in the subject line)
- 4) **Mail** — WID / P.O. Box 826880 / MIC 69 / Sacramento, CA 94280-0001

All comments received by the end of the comment period will be considered before the final directive is issued. However, we will not be able to individually respond to comments. **Comments received after the specified due date will not be considered.**

If you have any questions, contact your WID Regional Advisor at (916) 653-6347.

DRAFT DIRECTIVE

WORKFORCE INVESTMENT ACT

Number:

Date:

69:141:jb:6511

TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: GRIEVANCE AND COMPLAINT PROCEDURES

EXECUTIVE SUMMARY:

Purpose:

This directive (1) provides guidance to Local Workforce Investment Areas (LWIA) and subrecipients of the Workforce Investment Act (WIA) Title I grant funds in the development, maintenance, and implementation of local-level grievance and complaint procedures. These procedures cover complaints alleging noncriminal violations of the requirements of WIA in the operation of local WIA programs and activities; and (2) transmit policy governing WIA Title I related grievance and complaint procedures at the State-level.

Scope:

This directive requires that LWIAs and subrecipients of the WIA Title I grant funds comply with the grievance and complaint provisions of WIA. This directive applies to programmatic grievances and complaints pursuant to WIA Section 181(c) and does not address the procedures for processing complaints alleging discrimination under WIA Section 188 and/or Title 29 Code of Federal Regulations (CFR) Part 37.

Effective Date:

This directive is effective on the date of its issuance.

REFERENCES:

- WIA Section 181(c)
- Title 20 CFR Part 667.600
- Title 29 CFR Section 37.35

STATE-IMPOSED REQUIREMENTS:

This directive contains some State-imposed requirements. These requirements are indicated by ***bold, italic*** type.

FILING INSTRUCTIONS:

Retain this directive until further notice.

BACKGROUND:

Title 20 CFR Section 667.600 requires each LWIA, State, and direct recipient of funds under Title I of WIA, excluding Job Corps, to establish and maintain a procedure for grievances and complaints to participants and other interested parties affected by the local workforce investment system, including One-Stop partners and services providers and the statewide workforce investment programs. (Job Corps complaint/grievance requirements can be found at Title 20 CFR Section 670.990.)

POLICY AND PROCEDURES:

Definition(s):

Days means consecutive calendar days, including weekends and holidays.

Local Workforce Investment Area includes the LWIA administrative entity, its subrecipients, and employers to which the administrative entity has delegated the complaint and grievance resolution process.

Complainant means any participant or other personally interested or personally affected party alleging a noncriminal violation of the requirements of WIA.

Grievance or complaint means a written expression by a party alleging a violation of WIA, regulations promulgated under WIA, recipient grants, subagreements, or other specific agreements under WIA, including terms and conditions of participant employment. ***All complaints, amendments, and withdrawals shall be in writing.*** These procedures are intended to resolve matters, which concern actions arising in connection with the WIA Title I grant program.

Hearing Officer means an impartial party who shall preside at a hearing on a grievance or complaint.

Participant means an individual who has been determined to be eligible to participate in, and who is receiving services under a program authorized by WIA as defined in WIA Section 101 (34).

Recipient means an entity to which a WIA grant is awarded directly from the U.S. Department of Labor (DOL) to carry out a program under Title I of WIA. The State is the recipient of funds awarded under WIA Sections 127(b)(1)(C), 132(b)(1)(B), and 132(b)(2)(B).

D
Subrecipient means an entity to which a subgrant is awarded and which is accountable to the recipient (or higher tier subrecipient) for the use of the funds provided.

Policy:

It is the policy of the State of California that:

- ***The principles and procedures set forth in this directive shall be used by all California LWIAs in the development of local-level grievance and hearing procedures; and***
- ***The principles and procedures set forth in this directive shall govern the treatment and handling of all grievances or complaints in connection with all WIA Title I grant programs and activities conducted by the State, or pursuant (directly or indirectly) to subgrants from the State.***

Procedures:

I. GENERAL PRINCIPLES AND REQUIREMENTS

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These procedures will guide the receipt, hearing, and resolution of noncriminal grievances and complaints relating to WIA Title I grant programs and activities that are funded with WIA Title I grant monies provided to the State by DOL. These procedures will be available for use by all individuals and entities, including WIA Title I grant participants, LWIA staff, subrecipients of LWIAs, unsubsidized employees in an employment activity operating with WIA Title I funds, and other interested parties. Additionally, all California LWIAs and subrecipients of WIA Title I grant funds must make reasonable efforts to assure that information about the content of the grievance and complaint procedures will be understood by affected participants and individuals, including youth and those who are limited English-speaking individuals. Such efforts must comply with the language requirements of Title 29 CFR Section 37.35.

F
At all levels of the grievance or complaint process, complainants have the right to be represented, at their own expense, by a person(s) of their choosing.

Grievances or complaints must be filed within one year of the alleged violation. All grievances or complaints, amendments, and withdrawals must be in writing. All persons filing grievances or complaints shall be free from restraint, coercion, reprisal, or discrimination.

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II. LWIA GRIEVANCE AND COMPLAINT PROCEDURES

Pursuant to Title 20 CFR Sections 667.660 through 667.610, the State requires LWIAs to establish procedures resolving grievances and complaints alleging a violation of WIA Title I, regulations, grants, or other agreements under WIA. The following outlines the procedures for resolving issues arising in connection with WIA Title I grant programs operated by each administrative entity for the LWIAs or its subrecipients. Any participant or other interested party adversely affected by a decision or action by the local workforce system, including decisions by One-Stop partners and service providers, has the right to file a grievance or complaint with the LWIA.

On placement into the WIA Title I grant program, each participant will be provided with a written description of the local grievance and complaint procedure. This description must include (1) notification that the participant has the right to file a grievance or complaint at any time within one calendar year after the occurrence of an event; (2) instructions for filing a grievance or complaint; and (3) notification that the participant has the right to receive technical assistance. Such information shall be modified as needed whenever procedures are changed. A copy of the written description of the local grievance and complaint procedure, which includes the participant's acknowledgement of receipt, shall be placed in the participant's file.

The LWIAs have the responsibility to provide technical assistance to the complainants, including those grievances or complaints against the LWIAs. Such technical assistance includes providing instructions on how to file a grievance or complaint, providing relevant copies of documents such as the WIA, regulations, local rules, contracts, etc., and providing clarifications and interpretations of relevant provisions. This requirement shall not be interpreted as requiring LWIAs to violate rules of confidentiality.

A. Form and Filing of Grievance or Complaint

The official filing date of the grievance or complaint is the date the written grievance or complaint is received by the LWIAs, its service providers, One-Stop partners, or subrecipients. The filing of the grievance or complaint will be considered a request for a hearing, and the LWIA shall issue a written decision within 60 days of the filing of the grievance or complaint. ***The grievance or complaint must be in writing, signed, and dated.*** For resolution purposes, the State recommends that the LWIAs obtain the following information for all complaints:

- Full name, telephone number, and mailing address of the complainant;
- Full name, telephone number, and mailing address of the respondent;
- A clear and concise statement of the facts and dates describing the alleged violation;

- The provisions of the WIA, the WIA regulations, grant, or other agreements under the WIA, believed to have been violated;
- Grievance or complaint against individuals, including staff or participants, shall indicate how those individuals did not comply with the WIA law, regulation, or contract; and
- The remedy sought by the complainant.

The absence of any of the requested information shall not be a basis for dismissing the grievance or complaint.

A grievance or complaint may be amended to correct technical deficiencies at any time up to the time of the hearing. Grievances or complaints may not be amended to add new issues. The one-year time period in which a grievance or complaint may be filed is not extended for grievances or complaints that are refiled with amendments. Grievances or complaints may be withdrawn at any time prior to the issuance of the hearing officer's decision. The LWIA shall send a copy of the grievance or complaint to the respondent.

B. Informal Resolution

The LWIA shall notify the complainant and the respondent of the opportunity for an informal resolution. Respondents must make good faith efforts to resolve all grievances or complaints prior to the scheduled hearing. Failure on the part of either party in the grievance or complaint to exert good faith efforts shall not constitute a basis for dismissing a grievance or complaint, nor shall this be considered to be a part of the facts to be judged in the resolution process. The LWIA must assure that every grievance or complaint not resolved informally or not withdrawn is given a formal hearing, regardless of the grievance or complaint's apparent merit or lack of merit.

C. Notice of Hearing

Hearings on any grievance or complaint shall be conducted within 30 days of filing of a grievance or complaint. The complainant and the respondent must be notified in writing of the hearing ***10 days prior to the date of the hearing. The 10-day notice may be shortened with the written consent of both parties. The hearing notice shall be in writing and contain the following information:***

- ***The date of the notice, name of the complainant, and the name of the party against whom the grievance or complaint is filed.***
- ***The date, time, and place of the hearing before an impartial hearing officer.***

- ***A statement of the alleged violations. These statements must accurately reflect the content of the grievance or complaint as submitted by the complainant. However, clarifying notes may be added to assure that the grievance or complaint is addressed accurately.***
- ***The name, address, and telephone number of the contact person issuing the notice.***

D. Conduct of Hearings

An impartial hearing officer shall conduct the hearing. The State suggests that LWIAs seek impartial hearing officers from among the staff of legal offices or county personnel departments of municipalities or counties that will not be directly affected by, or will not implement the final resolution of, a specific grievance or complaint.

The hearing will be conducted in an informal manner with strict rules of evidence not being applicable and according to the procedures established by the LWIAs. Both parties will have the right to present written and/or oral testimony and arguments; the right to call and question witnesses in support of their position; the right to examine records and documents relevant to the issues; and the right to be represented. ***The hearing will be recorded electronically or by a court reporter.***

E. Decision

Not later than 60 days after the filing of the grievance or complaint, ***the hearing officer shall mail a written decision to both parties by first class mail. The hearing officer's decision shall contain the following information:***

- ***The names of the parties involved;***
- ***A statement of the alleged violation(s) and issues related to the alleged violation;***
- ***A statement of the facts;***
- ***The hearing officer's decision and the reasons for the decision;***
- ***A statement of corrective action or remedies for violations, if any, to be taken; and***
- ***Notice of the right of either party to request a hearing with the State within 10 days of the receipt of the decision.***

F. Appeal

If a complainant does not receive a decision at the LWIA level within 60 days of the filing of the grievance or complaint, or receives an adverse decision, the complainant then has the right to file an appeal with the State.

The complainant may request a State hearing by submitting a written notice of appeal to:

Chief, Compliance Review Division, MIC 22-M
Employment Development Department
P.O. Box 826880
Sacramento, CA 94280-0001

III. STATE-LEVEL GRIEVANCE AND COMPLAINT PROCEDURES

Title 20 CFR Section 667.600(d) requires the State to provide a process for dealing with grievances and complaints from participants or interested parties affected by the statewide workforce investment programs, resolving appeals of decisions issued at the LWIA level, remanding grievances and complaints related to the local WIA Title I programs to the LWIA grievance process, and affording an opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint.

In cases where the State has imposed either administrative or financial/monetary sanction(s) resulting from monitoring, investigations, or audits, the complainant may file an appeal with the State through the procedures as described in WIA Directive [WIAD01-3](#), *Audit Resolution*.

A. State-Level Informal Resolution and Hearing Procedures

1. All complaints of noncriminal violations of the requirements of WIA by the State, or complaints by individuals or interested parties affected by the statewide investment program shall be filed in writing with the Chief of Compliance Review Division (CRD). All requests for State hearings shall include the same basic elements necessary for local-level hearings. These are:
 - Full name, telephone number, and mailing address of the complainant;
 - Full name, telephone number, and mailing address of the respondent;
 - A clear and concise statement of the facts and dates describing the alleged violation;
 - The provisions of the WIA, the WIA regulations, grant, or other agreements under the WIA, believed to have been violated;

- Grievance or complaint against individuals, including staff or participants, shall indicate how those individuals did not comply with the WIA law, regulation, or contract; and
- The remedy sought by the complainant.

On receipt of the request for a State hearing, the Chief of CRD or his/her designee shall review the grievance or complaint and shall provide an opportunity for an informal resolution. The CRD shall notify the complainant and the respondent within 10 working days of receipt of the grievance or complaint and proceed with the informal resolution process. If the State cannot resolve the grievance or complaint informally, then a formal hearing will be held.

Hearings on any grievance or complaint shall be conducted within 30 days of the filing of a grievance or complaint. The complainant and the respondent shall be notified in writing of the hearing 10 days prior to the date of hearing. The hearing notice shall advise the following:

- The date, time, and place of the hearing before an impartial hearing officer.
- The pertinent sections of the WIA or any other federal regulations involved.
- A statement of the alleged violations. These statements must accurately reflect the content of the grievance or complaint as submitted by the complainant. However, clarifying notes may be added to assure that the grievance or complaint is addressed accurately.
- The name, address, and telephone number of the contact person issuing the notice.

The hearing will be recorded electronically or by a court reporter. Both parties will have the opportunity to present oral and written testimony under oath, to call and question witnesses in support of their position, to present oral and/or written arguments, to examine records and documents relevant to the issues, and to be represented. Within 60 days of receipt of a complaint, the hearing officer shall issue a written decision to the concerned parties.

2. A complainant may file an appeal with the State if no decision has been issued at the LWIA level within the 60-day time limit. A request for an initial State hearing may be filed, or if mailed, postmarked within 15 days of one of the following dates:
 - The date on which the LWIA should have issued a decision regarding a locally filed grievance or complaint; or

- The date after the filing of a grievance or complaint when an instance of restraint, coercion, reprisal, or discrimination was alleged to have occurred as a result of filing the grievance or complaint.

Request for State hearing shall be filed in writing with the Chief of CRD and shall include the following information:

- Full name, telephone number, and mailing address of the complainant;
 - Full name, telephone number, and mailing address of the LWIA or subrecipient;
 - A statement indicating the basis of the request; and
 - Copies of relevant documents, such as the grievance or complaint filed at the LWIA or subrecipient.
3. Request for State hearing relating to allegedly deficient LWIA grievance and complaint procedures, and to allegations of improper actions as a consequence of a grievance or complaint, should be filed immediately with the Chief of CRD.
 4. Grievances or complaints related to the local WIA programs that are submitted directly to the State will be referred to the appropriate LWIA for resolution in accordance with the local grievance and complaint process.

B. Appeals of LWIA Decisions

A request for a State hearing of the LWIA hearing officer's decision must be filed in writing and mailed to the Chief of CRD within 10 days of receipt of decision by the appealing party. The request for hearing should contain the following information:

- Full name, telephone number, and mailing address of the appellant;
- Full name, telephone number, and mailing address of the respondent;
- A copy of the local hearing officer's decision;
- A brief statement of the reasons a State hearing is being requested. The statement must specify the errors of fact and/or statutory and regulatory interpretation that are alleged to have been made by the LWIA hearing officer. If appropriate, the statement must identify the elements of the LWIA hearing officer's decision to be reviewed; and
- A statement of remedy sought by the appellant. If not provided elsewhere in the appeal, the appellant must provide a statement setting forth the arguments presented to the local hearing officer that the appellant considers to support the appropriateness of the remedy they are seeking.

On receipt of the request for a State hearing, an evidentiary hearing before an impartial hearing officer will be scheduled. The CRD will notify the concerned

parties and the LWIA by first class mail, certified with a return receipt, of the date, time, and place of the hearing at least five days before the scheduled hearing. ***It is the responsibility of the LWIA to submit the complete, typed transcript of the hearing, copies of all supporting documents, and a summary of all steps taken in response to the grievance or complaint to the CRD within 10 days of the LWIA's receipt of the notice.***

The hearing officer will review the records to determine if the party was afforded a process in compliance with WIA Title I and the local grievance and complaint procedure. The hearing will be recorded electronically or by a court reporter. Both parties will have the opportunity to present oral and written testimony under oath, to call and question witnesses in support of their position, to present oral and/or written arguments, to examine records and documents relevant to the issues, and to be represented. Within 60 days of receipt of the request for review, the hearing officer shall issue a written decision either affirming the local-level decision or remanding the grievance or complaint to the LWIA grievance process.

If the hearing officer remands the grievance or complaint, the LWIA shall hold a hearing on the grievance or complaint within 10 days of receipt of the hearing officer's decision and render a decision within 10 days of the hearing.

C. Federal-Level Appeal Process

Under Title 20 CFR Section 667.610(a)(1), if the State has not issued a decision within the required 60-day time limit, the complainant can file an appeal to DOL. The appeal must be filed with DOL no later than 120 days of the filing of the grievance or complaint with the State, or the filing of the appeal of a local grievance or complaint with the State.

In cases where a decision has been reached and the State issued an adverse decision, the complainant can file an appeal to DOL within 60 days of the receipt of the decision being appealed.

The request for appeal must be submitted by certified mail, return receipt to:

Attention: ASET
Secretary
U. S. Department of Labor
Washington, D.C. 20210

A copy of the appeal must be simultaneously provided to the ETA Regional Administrator-Region 6, U.S. Department of Labor, Office of Regional Administrator, P.O. Box 193767, San Francisco, CA 94119-3767 and the opposing party.

ACTION:

All LWIAs shall review grievance and complaint procedures specified in this directive and ensure that the policies and procedures are in accordance with these requirements.

INQUIRIES:

Please direct inquiries about this directive to your [Regional Advisor](#) at (916) 653-6347 or Georganne Pintar Baldwin, Local Policy Guidance Unit Manager, at (916) 654-7611.

BOB HERMSMEIER
Chief
Workforce Investment Division

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